

L.....T.....T.....T.....T.....T.....T.....T....Special Civil Application No 8092 of 95
with

Special Civil Application No 8837 of 95

Date of decision: 17/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAGANBHAI SHANABHAI VALMIKI vs GENERAL MANAGER

Appearance:

1. Special Civil Application No. 8092 of 1995

MR CB DASTOOR for Petitioner

MR HS MUNSHAW for Respondent No. 1

2. Special Civil Application No 8837 of 95

MR HS MUNSHAW for Petitioner

PARTY-IN-PERSON for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

Coram : MR.JUSTICE R.BALIA.

ORAL JUDGEMENT

These two petitions relate to the order of dismissal passed against the petitioner dated 5.10.87 by the Gujarat State Road Transport Corporation('Corporation ' for short) and are founded on the same set of facts and therefore, they are heard and decided by this common order.

2. The facts which need be noticed for the present purpose are that the petitioner-Magan Valmik while serving as a conductor with the Corporation, suffered a fracture on his left hand and pleaded his inability to resume his duties as conductor and requested the Corporation to offer him lighter job. Having failed in his request, he approached this court by filing Spl.C.A. No. 2657/87. This court has disposed of the said Spl.C.A. by observing that the learned counsel for the respondent Corporation stated that the petitioner will be given lighter work till 30.9.87 at the place where he was transferred. A statement about adjustment of leave was also made. In view of the said statement, the Court disposed of the petition with a direction that the petitioner shall report for duty on 25.7.1987 at Kapadvanj and the respondent will accordingly inform the Kapadvanj depot to allow him to join duty. After that order was passed, on 5.10.87 the petitioner was dismissed from service. The petitioner challenged the dismissal order before the Labour Court. The Labour Court set aside the order of dismissal vide award dated 7.7.95 in Reference (LCN) No.116/88. Special Civil Application No.8837/85 has been filed by the Corporation challenging the said award. Special Civil Application No. 8092/95 has been filed by Magan S. Valmik seeking a direction that in pursuance of the award dated 7.7.95, the petitioner be allowed to resume duties which the Corporation is not permitting.

3. The other sequence of events which have taken place in the matters may also be noticed. On 30.6.89 the petitioner was served with the chargesheet of remaining wilful absent from duty on the post of conductor. The petitioner approached this court challenging assigning him the duties of conductor vide Special Civil Application No.1142/89. This court, by taking notice of the reports submitted by the doctor in pursuance of the direction of this court rejected the petition. Against the said order, the petitioner, preferred LPA No. 60/90. The Division Bench of this Court again directed the petitioner to be medically examined. As

the report was not received by the Division Bench after considerable time, the court was of the opinion that it was no use protracting the proceedings as the appellant is not on active duty and he has not received salary till then. The incumbent who was present before the court had agreed to report for duty in Surendranagar depot by 23.6.1990. The learned counsel for the corporation stated that the respondents have nothing against the appellant and they will permit the appellant to resume duty as a conductor. On apprehension being expressed that the incumbent may still find it difficult to work as a conductor because of the injuries sustained by him, the court permitted him to make a representation to the corporation and the court directed the corporation to consider the representation sympathetically when made. In the aforesaid background, the LPA was disposed of on June 21, 1990. Thereafter by order dated 28.12.90. The petitioner was dismissed from service in pursuance of the charge sheet which was served on him on 30.6.89.

4. Both the learned counsel agree that Reference (LCN) No. 116/88 did not concern the proceedings in pursuance of the charge sheet dt. 30.6.89 and dismissal order passed on 28.12.90. Therefore, any observation in connection with those proceedings in the award dated 7.7.95 are beyond the jurisdiction of the Tribunal and cannot be considered to have any effect whatsoever. on the validity or otherwise of the dismissal order dated 28.12.90 nor has the same any relevance to the dismissal order dated 5.10.87 which was the subject matter of reference before the Tribunal.

5. While the employee contends that in pursuance of the order dt. 7.7.95 he is being not taken on duty. The corporation contends that dismissal order dated 5.10.87. itself was revoked and the petitioner was reinstated in service on 16.12.88. Therefore, the award dt. 7.7.95 setting aside the dismissal order dt. 5.10.87 is of little consequence and of mere academic importance inasmuch as the order dated 5.10.87 by which the petitioner was dismissed stands cancelled. Therefore, so far as the corporation's application No. 8837/95 is concerned, no interference is called for in respect of setting aside the order dt. 5.10.87 by examining the merit of the award because as per the own saying of the corporation the order dt. 5.10.87 does not exist after 16.12.88. In view of the aforesaid circumstances application no. 8837/95 is dismissed.

In the like manner no relief for directing the corporation to permit the incumbent to join duties in pursuance of the revocation of the order dt. 5.10.87 can be granted so long as the order dt. 28.12.90 by which the petitioner was dismissed in the proceedings initiated by issuing chargesheet stands. The petition no. 8092/95 is also dismissed as the same is of academic interest.

The learned counsel for the employee states that the dismissal order dt. 28.12.90 was the subject matter of before the Labour Court, Surendranagar in Reference Case No.1362/90 and 86/91 which reference applications had been rejected on 12.4.93. The employee has challenged the said award by way of filing SCA No. 10616/95 which is pending before this court.

6. Orders in these Special C.A. being not connected with dismissal order dated 28.12.90, dismissal of these petitions shall not affect the merit of issues raised in Special C.A.No. 10616/95.

for correction pl.see the original